

STATE PROCUREMENT OFFICE
FREQUENTLY ASKED QUESTIONS (FAQs)
Act 216/2004 and Act 52/2003

Act 216/2004, Part II: Responsibility of Offerors (Proof of Compliance)

- 1. *What business types must register with the Department of Commerce and Consumer Affairs?***
Owners of all forms of business except **sole proprietorships, charitable organizations, unincorporated associations and foreign insurance companies** must register with DCCA, BREG. Foreign insurance companies must register with DCCA, INSURANCE DIVISION.
- 2. *Can a business not required to be registered with the Department of Commerce and Consumer Affairs (DCCA) and not registered to do business in the State meet the compliance requirements?***
Yes, a business not required to be registered with DCCA, and not registered with DCCA, would be compliant. Therefore a certificate of good standing is not issued, and would not be required for proof of compliance.
- 3. *What is the purpose for requiring these compliance certificates?***
The purpose of the Act is to ensure that government purchases are made with contractors and vendors who are in compliance with the State of Hawaii laws.
- 4. *A state agency buys from a mainland company, no employees in Hawaii, no presence in Hawaii, doesn't pay Hawaii taxes, --- Do they need to register with DCCA, BREG?***
No, the mainland company does not have to register with DCCA, BREG.
- 5. *Does Act 216 apply to a one dollar purchase?***
Yes, unless otherwise exempted by the Chief Procurement Officer, Act 216 applies to **all** purchases made by any State or County governmental agency.
- 6. *Does Act 216 apply to membership dues and registration fees?***
No.
- 7. *Does it apply to airline ticket purchases?***
Yes, unless using an existing contract to purchase airline tickets (i.e. SPO Comprehensive Travel Services contract), since the proof of compliance documents were already obtained.
- 8. *If a vendor will not obtain the necessary certificates, but is the only source for the goods or services, what are my options?***
If a vendor is not willing to obtain the necessary certificates but is believed to be the only source for the goods or services, an agency should first verify that the goods or service are truly not available from any other vendor. If not available from another vendor, the agency can submit the following forms - SPO Form 7 - Request for Exemption from Chapter 103D, HRS, and SPO Form 7A- Notice of Exemption from Chapter 103D, HRS.
- 9. *The vendor they are buying from is on a PL, but the product is not, do they still need the certificates?***
Yes. The vendor on that price list was in compliance for only those items specifically listed on that bid solicitation. If an agency needs to purchase products not on that price list or any other price list, then the purchase would be handled the same as any other purchase subject to Chapter 103D, HRS.

10. Are the certificates required for reimbursements to employees? Such as for purchasing office supplies, travel expenses, parking costs, etc.)

Yes, if the item purchased by the employee was subject to a procurement process; such as small purchase (i.e. hardware, calculator, computer software, Internet purchase, etc.)

No, if the item was not subject to a procurement process; such as parking fees, costs associated with authorized travel, registration fees for conferences, etc,

11. Does Act 216 apply to pCard purchases?

Yes.

12. Will there be some type of centralized system to collect the proof of compliance data for all vendors and make it available to all purchasing agencies?

Yes. Currently under development, vendors and contractors will be able to complete process on-line; thereafter purchasing agencies will be able to perform an on-line verification for vendor compliance.

13. What are the Act 216 requirements?

Prior to issuing an award or Purchase Order, or payment by pCard, a purchasing agency shall verify vendor compliance with State laws, by requesting vendor to submit the following form(s), when applicable:

| Compliance Department | Form | Effective | |
|---|--|----------------------------------|----------------------|
| Dept of Taxation (TAX) | Tax Clearance Form: A-6 http://www.hawaii.gov/tax/a1_1alphalist.htm | 6 months from last approval date | Original green stamp |
| Dept of Labor & Industrial Relations (DLIR) | Certificate of Compliance: LIR#27 http://www.dlir.state.hi.us/formsall.shtml | 6 months from approval date | Copy acceptable |
| Dept of Commerce & Consumer Affairs (DCCA) | Certificate of Good Standing (COGS) http://www.hawaii.gov/dcca/areas/breg/registration/ | 6 months from issuance date | Copy acceptable |

14. When using Price List, Vendor List, or other existing contracts, do I need to obtain the proof of compliance documents from vendors?

No. Any existing contract, including price and vendor list, have already obtained the required compliance documents, therefore when using any SPO price or vendor list, proof of compliance is not required. In addition, any contract entered into prior to the proof of compliance requirements of Act 52, SLH 2003 and Act 216, SLH 2204, does not require submittal of proof of compliance documents.

15. Will the SPO submit legislation to amend section 103D-310?

The SPO does not intent to submit legislation to repeal or amend section 103D-310(c), HRS, provision.